

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

KEIRON KENNETH  
HOLMES, SR.,

Plaintiff,

V.

SGT. BAXTER, *et al.*,

Defendants.

CV422-227

## ORDER

*Pro se* plaintiff Keiron Kenneth Holmes, Sr. has submitted a document titled “Amendment and Added Defendants.” Doc. 43. The Clerk reasonably construed that document as an Amended Complaint. However, since, as explained below, Holmes may not file an Amended Complaint without all parties’ consent or the Court’s leave, it is not properly filed.

Holmes’ “amendment” asserts claims against Sheriff John T. Wilcher, Major Wright, Major Hill, Captain Ervin, Captain Bonds, “and all other majors . . . and all other captains and supervisor[s] here at Chatham County Detention Center.” *See* doc. 43 at 1. A plaintiff’s ability to amend a complaint once a case is underway is governed by Federal

Rule of Civil Procedure 15. The Rule distinguishes between amendments “as a matter of course,” and “all other[s].” Fed. R. Civ. P. 15(a)(1)-(2). Amendments “as a matter of course” must be submitted within 21 days of service of the original pleading or, “if the pleading is one to which a responsive pleading is required[, *i.e.*, a complaint], 21 days after service of a responsive pleading[, *i.e.*, an answer]. . . ,” or other motions not at issue here, “whichever is earlier.” Fed R. Civ. P. 15(a)(1)(A)-(B). Since defendants all waived service in this case, *see* docs. 25-28, Holmes’ Complaint is deemed served on the date that the waivers were filed, *i.e.*, January 25, 2023. *See, e.g., Cunningham v. Fulton Cnty.*, 2017 WL 11585627, at \*1 (N.D. Ga. Mar. 17, 2017) (citing Fed. R. Civ. P. 4(d)(4)). Twenty-one days from the date the waivers were filed was February 15, 2023. The Amended Complaint, deemed filed<sup>1</sup> on April 18, 2023, *see* doc. 43 at 7, was well outside the twenty-one-day period.

Since Holmes was not entitled to amend his Complaint as a matter of course, he required either the Court’s leave or “the opposing party’s

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<sup>1</sup> “Under the ‘prison mailbox rule,’ a *pro se* prisoner’s court filing is deemed filed on the date it is delivered to prison authorities for mailing.” *Williams v. McNeil*, 557 F.3d 1287, 1290 n. 2 (11th Cir. 2009). “Absent evidence to the contrary in the form of prison logs or other records, [courts] will assume that [a prisoner’s filing] was delivered to prison authorities on the day he signed it . . . .” *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001).

written consent.” Fed. R. Civ. P. 15(a)(2). “In general, if an amendment that cannot be made as of right is served without obtaining the court’s leave or the opposing party’s consent, it is without legal effect and any new matter it contains will not be considered unless the amendment is resubmitted for the court’s approval.” *Hoover v. Blue Cross & Blue Shield of Ala.*, 855 F.2d 1538, 1544 (11th Cir. 1988) (emphasis and internal citation omitted). Holmes’ Amended Complaint is, therefore, **STRICKEN** as improperly filed. *See, e.g., Crisp v. Georgia*, 2021 WL 5828952, at \*3 (N.D. Ga. Nov. 15, 2021); *Vaughan v. Delta Global Services/UNIFI/Argenbright*, 2021 WL 2585621, at \*1-\*2 (N.D. Ga. Feb. 24, 2021).

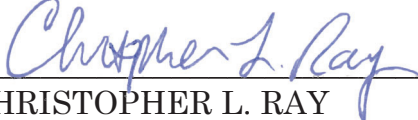
Pursuant to the operative schedule, the deadline to move to amend or add parties is May 1, 2023.<sup>2</sup> Doc. 33. Although Holmes’ Amended Complaint is procedurally improper, a brief extension of that deadline is appropriate to permit him to seek either defendants’ written consent or the Court’s leave to file it. *Cf.* Fed. R. Civ. P. 6(b)(1)(A). The deadline for

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<sup>2</sup> The Clerk’s scheduling notice lists April 29, 2023 as the deadline for moving to amend or to add parties. *See* doc. 33 at 1. However, April 29 is a Saturday. By operation of the Federal Rules, therefore, the deadline is automatically extended until the following Monday, May 1, 2023. *See* Fed. R. Civ. P. 6(a)(1)(C).

any party to move to amend the pleadings or to add parties is extended until May 8, 2023.

**SO ORDERED**, this 26th day of April, 2023.

  
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CHRISTOPHER L. RAY  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA